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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1956

No. [redacted] 151

MAURICE BRAVERMAN,
*Petitioner,*

vs.

BAR ASSOCIATION OF BALTIMORE CITY,
*Respondent.*

## BRIEF FOR RESPONDENT IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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IN THE

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OCTOBER TERM, 1956

## No. 1016

MAURICE BRAVERMAN,

*Petitioner,*

VS.

BAR ASSOCIATION OF BALTIMORE CITY,

*Respondent.*

## BRIEF FOR RESPONDENT IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

### STATEMENT OF CASE

Petitioner was not disbarred from the practice of law in the courts of Maryland because of his apparently admitted membership in the Communist Party. He was disbarred because the Court of Appeals of Maryland found that, as a result of Petitioner's conviction of conspiracy (which was a crime at common law and is a crime under the laws of Maryland and of the United States) to commit offenses against the United States, the continuance of Petitioner in the practice of law "would be subversive of the proper administration of justice or incompatible with a proper respect of the court for itself or a proper regard for the integrity of the profession." *Braverman v. Bar Association*, 121 Atl. 2d 473, 483.

In the court below, Petitioner contended that it was not until June 4, 1951 (*Dennis v. United States*, 341 U. S. 494, 95 L. Ed. 1137) that conspiracy to violate the Smith Act could be authoritatively regarded as a crime and that the acts for which he was convicted and for which he was disbarred occurred prior to that date. The court did not accept Petitioner's contention that he, as an attorney, could, with impunity and without consequence to his professional status, violate the laws of the United States until such time as this Court has finally ruled upon the constitutionality of such laws.

Petitioner was ably represented by counsel of his choice at the hearings before the Supreme Bench of Baltimore City and the Court of Appeals of Maryland. He did not testify in his own behalf and the only evidence offered by him was the transcript of the proceedings of his trial in the United States District Court.

## ARGUMENT

### A.

Petitioner contends that he was convicted in the United States District Court "on nothing more than a finding of membership in the Communist Party" and that his disbarment is "nothing more than disbarment for radical views and associations." The Court of Appeals for the Fourth Circuit, in its opinion upon Petitioner's appeal from his conviction, said at 198 Fed. 2d 679, 686:

> "The connection of the defendants with the conspiracy in which the Communist Party was engaged was also amply supported by the testimony. The case as to them was not one of mere membership in the party depending upon 'guilt by association'. They were shown to be officers and teachers of the party occupying such positions with respect to its activities that the jury could well conclude that they necessarily

had knowledge of the criminal purposes in which it was engaged."

And at 198 Fed. 2d 679, 687, the court said:

> "Defendants contend that the court submitted the case in such way as to permit the jury to convict them of conspiracy on the basis of mere membership in the Communist Party, without knowledge on their part of any criminal purpose in which the party was engaged. There is no basis for any such contention. On the contrary the jury were expressly instructed that no one of the defendants could be convicted unless the jury should find guilty knowledge and intent on his part."

After quoting the trial court's instructions at length, the court said at 198 Fed. 2d 679, 688:

> "In the light of these instructions, there is no ground whatever for the contention strenuously made by defendants that the jury were allowed to convict on the basis of mere party membership or guilt by association."

In the face of these quotations from the court's opinion, it cannot seriously be contended that the Petitioner was convicted on nothing more than a finding of membership in the Communist Party and that he was disbarred for nothing more than radical views and associations.

B.

Petitioner contends that he was convicted on sensational, tainted and unreliable testimony. There is nothing in the record of this case to support such a contention. This Court has, on two occasions, refused to review Petitioner's conviction (*Frankfeld v. United States*, 344 U. S. 922; 345 U. S. 913) and, we submit, it should not now review it in these proceedings. This is particularly true when it is con-

sidered that Petitioner's contentions are simply contentions and are unsupported by anything (other than statements of his counsel) in the record in this case.

C.

Petitioner contends that disbarment cannot constitutionally be based on matters having no direct relevance to fitness to practice law. That question is not at issue here because the acts for which Petitioner was convicted and for which he was disbarred obviously have direct relevance to his fitness to continue the practice of law and the court below so held. At the time of his admission to the Bar of Maryland, Petitioner swore to support the Constitution of the United States and to bear allegiance to the Constitution and Laws of the State of Maryland. The court below found that Petitioner violated this oath.

The cases cited by Petitioner on his brief to support his contention are not in point. *Ex Parte Garland*, 4 Wall. 333, 18 L. Ed. 366, and *Cummings v. Missouri*, 4 Wall. 277, 18 L. Ed. 356, held Civil War statutes requiring attorneys and ministers to make certain oaths as to past acts as a prerequisite to continuing to practice their professions to be *ex post facto* and invalid. In this case the acts for which Petitioner was convicted and for which he was disbarred were, as the lower court stated in its opinion, committed after the enactment of the Smith Act and the Maryland Disbarment Law. *Dent v. West Virginia*, 129 U. S. 114, 32 L. Ed. 623, held that a state may require persons wishing to practice medicine in that state to comply with certain statutory requirements. *Wieman v. Updegraff*, 344 U. S. 183, 97 L. Ed. 216, held invalid a loyalty oath prescribed by state law for all state officers and employees. The *Dent case* supports our position and the *Wieman case* is not relevant to any issue presented in this case.

In *Ex Parte Wall*, 107 U. S. 265, 27 L. Ed. 552, an attorney was disbarred for participating in a lynching, prior to his conviction of the crime. The language of this Court in that case is particularly appropriate here:

> "Now what is the offense with which the petitioner stands charged? It is not a mere crime against the law; it is much more than that. It is the prostration of all law and government; a defiance of the laws; a resort to the methods of vengeance of those who recognize no law, no society, no government. Of all classes and professions, the lawyer is most sacredly bound to uphold the laws. He is their sworn servant; and for him, of all men in the world, to repudiate and override the laws, to trample them under foot and to ignore the very bands of society, argues recreancy to his position and office and sets a pernicious example to the insubordinate and dangerous elements of the body politic. It manifests a want of fidelity to the system of lawful government which he has sworn to uphold and preserve." (107 U. S. 265, 273, 27 L. Ed. 552, 556)

D.

Petitioner has no vested right to practice law under the laws of Maryland (*In Re Taylor*, 48 Md. 28; *In Re Maddox*, 93 Md. 727) or under the laws of the United States (*Re Isserman*, 345 U. S. 286, 289, 97 L. Ed. 1013). Disbarment is not punishment but the removal of officers of the court deemed unfit by that court to continue the practice of law. *Ex Parte Wall, supra; Re Isserman, supra.* A state, and the courts created by the state to administer its laws, are charged with the responsibility of determining the fitness of those seeking to become officers of its courts. *Re Summers*, 325 U. S. 561, 89 L. Ed. 1795. Similarly, a court having the power to admit an attorney to practice has the inherent power to order his disbarment and to determine for what cause removal from its rolls should be ordered. *Ex*

*Parte Burr*, 9 Wheat. 529, 6 L. Ed. 152; *Re Secombe*, 19 How. 9, 15 L. Ed. 565; *Ex Parte Robinson*, 19 Wall. 505, 22 L. Ed. 205. The nature, reasons and seriousness of disbarment were all fully recognized and discussed by the Court of Appeals of Maryland in its opinion.

In *Selling v. Radford*, 243 U. S. 46, 61 L. Ed. 585, a petition was filed in this Court to disbar an attorney upon the grounds that he had been disbarred by the courts of Michigan from practice in the courts of that state. In the course of its opinion, this Court said at 243 U. S. 46, 50, 61 L. Ed. 585, 587:

> "In coming to solve that question three things are patent: (a) that we have no authority to re-examine or reverse, as a reviewing court, the action of the Supreme Court of Michigan in disbarring a member of the Bar of the courts of that state for personal and professional misconduct; * * *"

E.

We submit that in this case the validity of no state statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States and that the court below has not decided a federal question of substance not heretofore determined by this Court or in a way probably not in accord with applicable decisions of this Court.

## CONCLUSION

For the reasons set out above, it is respectfully submitted that the Petition for Certiorari should be denied.

Respectfully submitted,

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